

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

ACS STATE HEALTHCARE, LLC, a	)	
Delaware Limited Liability	)	
Company,	)	
	)	
Plaintiff,	)	4:08CV3021
	)	
v.	)	
	)	
FOURTHOUGHT GROUP, INC.,	)	ORDER
	)	
Defendant-Intervenor.	)	
_____	)	

This matter is before the Court on the stipulated motion to amend protective order (Filing No. [258](#)). The Court finds the motion should be granted. Accordingly,

IT IS ORDERED that said motion is granted; the protective order is amended in accordance with Addendum A attached hereto.

DATED this 13th day of August, 2009.

BY THE COURT:

/s/ Lyle E. Strom

\_\_\_\_\_  
LYLE E. STROM, Senior Judge  
United States District Court

## ADDENDUM A TO PROTECTIVE ORDER

### Clawback Agreement

#### WHEREAS:

1. ACS State Healthcare LLC ("ACS") and FourThought Group, Inc. ("FourThought") (collectively, the "Parties") agree that ACS and FourThought have collected electronically stored information ("ESI") potentially responsive to the Parties' written discovery requests and both will disclose the ESI on a mutually convenient date. This ESI does not include the documents produced by the Parties thus far. The Parties have reached agreement on the ESI search protocol used by ACS ("ACS' ESI Search Protocol"). ACS' ESI Search Protocol includes application of an agreed-upon Boolean proximity keyword search ("ACS' Search Terms") and does not, and is not intended to, identify the sole or entire methodology for ACS' identification of responsive ESI. ACS' ESI Search Protocol is intended to identify potentially responsive ESI ("Potentially Responsive Document(s)"). ACS' Search Terms are attached hereto as Exhibit A. The Parties have reached agreement on the ESI search protocol used by FourThought ("FourThought's ESI Search Protocol"). FourThought's ESI Search Protocol includes application of an agreed-upon Boolean proximity keyword search ("FourThought's Search Terms") and does not, and is not intended to, identify the sole or entire methodology for FourThought's identification of responsive ESI. FourThought's ESI Search Protocol is intended to identify potentially responsive ESI ("Potentially Responsive Document(s)"). FourThought's Search Terms are attached hereto as Exhibit B. The Parties acknowledge that application of the Parties' ESI Search Protocol resulted in the identification of an extremely large volume of Potentially Responsive Documents. The Parties further acknowledge that due to the large volume of Potentially Responsive Documents, it may not be feasible or reasonable for the Parties to review each Potentially Responsive Document for the purpose of identifying ESI subject to the attorney-client privilege and/or work product protection. The Parties have, therefore, agreed to the following process by which the Parties will search for and identify ESI subject to attorney-client privilege or work-product protection ("Privilege/Protection Protocol"): ACS will search the Potentially Responsive Documents for any ESI created, sent or received by any attorney or legal staff involved in RFPs 143Z1, 1158Z1, 2017Z1, 22942, 22317, this action (the "Action"), ACS' proposals to, or contracts with, the States of Nebraska, South\_Dakota and North\_Dakota or ACS formal protest of the Nebraska Department of Administrative Services' intent to award the Medicaid Management Information System contract to FourThought ("ACS' Legal Staff Keyword(s)"). ACS' Legal Staff Keywords are attached hereto as Exhibit\_C. FourThought will search the Potentially Responsive Documents for any ESI created, sent or received by any attorney or legal staff involved in RFPs 143Z1, 1158Z1, 2017Z1, 22942, 22317, this action (the "Action"), FourThought's proposals to, or contracts with, the States of Nebraska, South\_Dakota or ACS' formal protest of the Nebraska Department of Administrative Services' intent to award the Medicaid Management Information System contract to FourThought ("FourThought's Legal Staff Keyword(s)"). FourThought's Legal Staff Keywords are attached hereto as Exhibit\_D. The Parties will further search the Potentially Responsive Documents for any ESI which contains any one of a number of keywords which may indicate the Potentially Responsive Document is subject to attorney-client privilege and/or work-product protection ("Legal Term Keyword(s)"). The Legal Term Keywords are attached hereto as Exhibit E. The Parties will individually review any Potentially Responsive Document, which using automated searches, is shown to contain any Legal Staff Keyword or any Legal Term Keyword and determine whether the Potentially Responsive Document is subject to attorney-client privilege and/or work-product protection. The Parties will identify on a privilege log any Potentially Responsive Document which is (i) responsive to the other party's discovery requests and (ii) is subject to attorney-client privilege and/or work-product protection. The Parties, however, shall not be required to identify any privileged communications between or among them and their attorneys of record, regardless of the date of such communications. IT IS HEREBY ORDERED:

2. The Privilege/Protection Protocol is reasonable and intended to prevent the waiver of any privilege with respect to documents entitled to be protected from disclosure by the attorney-client privilege or work product doctrine. If, despite the Parties' application of the Privilege/Protection Protocol to Potentially Responsive Documents, ESI subject to the attorney-client privilege and/or work-product protection is inadvertently produced, such disclosure or production will be deemed inadvertent and shall not constitute a waiver of any available privilege or protection, nor result in a subject matter waiver of any applicable privilege, by ACS. In the event that either of the Parties discovers or suspects that the other party has produced any ESI which may be subject to attorney-client privilege and/or work-product protection, such party shall bring its receipt of such material to other party's attention immediately upon discovery, but in any event no later than twenty four (24) hours after such discovery. Upon the request of the disclosing party, the receiving party shall (i) promptly delete any ESI subject to attorney-client privilege and/or work product protection from any and all computer databases and (ii) upon receipt of replacement compact discs, digital video discs, or other media that do not contain the privileged ESI, destroy or return any and all compact discs, digital video discs, and other media containing the privileged ESI. The disclosing party's disclosure of ESI shall cease to be inadvertent if, within five (5) business days after being notified by the receiving party that it has received potentially privileged ESI, the disclosing party does not request the return or destruction of the privileged ESI pursuant to

Paragraphs\_8-9. Upon the disclosing party's request, the receiving party shall promptly disclose the names of any individuals, except the Parties' attorneys of record, who have read or had access to the ESI subject to attorney-client privilege and/or work product protection. Any party's inadvertent production of any ESI subject to the attorney-client privilege and/or work product protection may not be used as a basis to argue or contend that the party waived the attorney client privilege and/or work product protections applicable to such ESI or to contend that any subject matter waiver by the party occurred, so long as the party has complied with the Privilege/Protection Protocol. No inadvertently produced ESI subject to the attorney-client privilege and/or work product protection may be used in evidence in this action or for any other purpose.

**EXHIBIT A**

**ACS' Search Protocol**

Search #1

(DateCreated greater than or equal to January 1, 2004 and DateCreated less than or equal to June 1, 2008)

AND (

((Nebraska or "NE" or "South Dakota" or "SD" or "North Dakota" or "ND" or Oklahoma or "OK") *and* 22942 or 143Z1 or 1158Z1 or 2017Z1 or 22317))

OR

((Nebraska or "NE" or "South Dakota" or "SD" or "North Dakota" or "ND" or Oklahoma or "OK") *and* (22942 or 143Z1 or 1158Z1 or 2017Z1 or 22317) *and* (Procurement or "Bid" or "Bidder" or Conflict or Orals or BAFO or "Best and Final Offer" or MMIS or "Medicaid Management Information System" or Enterprise or Litigation or Demo or Demonstration or Presentation or VisionStep or "EDS" or "Department of Health and Human Services" or HHS or DHHS or "Department of Administrative Services" or DAS))

OR

((22942 or 143Z1 or 1158Z1 or 2017Z1 or 22317) *and* (request) and (documents or information or records))

OR

((Nebraska or "NE" or "South Dakota" or "SD" or Oklahoma or "OK" or 22942 or 143Z1 or 1158Z1 or 2017Z1 or 22317) *and* (Consultant or Planning or Implementation or MITA or "Medicaid Information Technical Architecture" or CMS or "Centers for Medicare and Medicaid Services" or FOIA or "Freedom of Information Act" or Protest or Court or SOA or "Service Oriented Architecture" or "Interface Processing" or "Transfer System" or "IV & V" or DSS or "Decision Support System" or "Alternatives Analysis" or "Alternative Analysis" or "Deliverables" or "Deliverable" or IAPD or "implementation advanced planning document" or Score or Scoring or "Proposal Evaluation Guide" or PEG or FDGS))

OR

((Nebraska or "NE" or Oklahoma or "OK") *and* (Microsoft))

OR

((Oklahoma or "OK") *and* (transfer) and (component))

OR

("Oklahoma Public Domain MMIS System Transfer" or "Oklahoma interChange MMIS" or OKMMIS or "Oklahoma & Electronic Data Systems Corporation" or "Oklahoma Healthcare Authority" or "Oklahoma Medicaid")

OR

((Nebraska or "NE" or "South Dakota" or "SD") *and* (Proprietary or Confidential or "Trade Secret" or "Four Thought" or FTG or FourThought or FT or 4TG))

OR

((("South Dakota" or "SD") *and* (DSS or "Department of Social Services"))

OR

((Nebraska or "NE" or "South Dakota" or "SD" or "North Dakota" or "ND" or Oklahoma or "OK") *and* (RFP) *and* ("lowest responsible"))

OR

((Nebraska or "NE" or "South Dakota" or "SD" or Oklahoma or "OK") *and* ("Four Thought" or FTG or FourThought or FT or 4TG) *and* (TAC or "Technical Assistance Contractor" or consultant))

OR

((Nebraska or "NE" or "Department of Administrative Services" or DAS) *and* (Sulek))

OR

((("Four Thought" or FTG or FourThought or FT or 4TG) *and* (MMIS or "Medicaid Management Information System" or 22942 or 143Z1 or 1158Z1 or 2017Z1 or 22317 or "Health and Human Services" or HHS or "Department of Administrative Services" or DAS or Demo or Demonstration or Presentation or Enterprise or BAFO or "Best and Final Offer" or FDGS))

OR

("Faye Mak" or "Gino DeMarco" or "Kelley Carson" or "Barbera Bridgewater" or "Rod Kranzler" or "gdemarco@4tginc.com" or "gd@4tginc.com" or "kcarson@4tginc.com" or "Barberab2@aol.com" or "bbridgewater@4tginc.com")

)

Search #2

(DateCreated greater than or equal to June 1, 2008 and DateCreated less than or equal to January 1, 2009)

AND (

((Oklahoma or "OK") *and* (transfer) and (component))

OR

("Oklahoma Public Domain MMIS System Transfer" or "Oklahoma interChange MMIS" or OKMMIS or "Oklahoma & Electronic Data Systems Corporation" or "Oklahoma Healthcare Authority" or "Oklahoma Medicaid")

**EXHIBIT B**

**FourThought's Search Protocol**

Search #1

(Date range: June 1, 2004 through June 1, 2008)

AND (

((nebraska or NE or "south dakota" or SD or oklahoma or ok) and (22942 or 143Z1 or 1158Z1 or 2017Z1 or 22317))

OR

((nebraska or NE or "south dakota" or sd or oklahoma or ok or 22942 or 143Z1 or 1158Z1 or 2017Z1 or 22317) and (consultant or planning or implementation or mita or "medicaid information technical architecture" or cms or "centers for medicare and medicaid services" or foia or "freedom of information act" or protest or court or "Enterprise System" or "cost proposal" or "alternatives analysis" or deliverables or deliverable or iapd or "implementation advanced planning document" or score or scoring or "proposal evaluation guide" or peg or fdgs or pep or "proposal evaluation plan" or price or pricing or solution or "open record" or "public record" or solution or fiscal or agent or competitor))

OR

((nebraska or ne or "south Dakota" or sd) and (proprietary or confidential or "trade secret") and acs)

OR

(( "south dakota" or sd) and (dss or "department of social services") and tac)

OR

((nebraska or ne or "south dakota" or sd) and rfp and "lowest responsible")

OR

((nebraska or ne or "south dakota" or sd or oklahoma or ok) and (fourthought or ftg or "four thought" or ft or 4tg) and (tac or "technical assistance contractor" or consultant))

OR

(nebraska or ne or "department of administrative services" or das) and sulek

OR

((nebraska or NE or "south dakota" or sd or oklahoma or ok or 22942 or 143Z1 or 1158Z1 or 2017Z1 or 22317) and (fourthought or ftg or "four thought" or ft or 4tg) and (mmis or "medicaid management information system" or "health and human services" or hhs or "department of administrative services" or das or demo or demonstration or presentation or enterprise or bafo or "best and final offer" or fdgs or acs or assess or evaluate or select or bidders or draft or Matrix or SES or Pinnacle or govconnect or "First Data" or "government solutions"))

OR

(\*@acs)

OR

(acs)

)

Search #2

(Date Range: June 1, 2004 through January 1, 2009)

AND (

((Oklahoma or ok) and (22942 or 143Z1 or 1158Z1 or 2017Z1 or 22317))

OR

((22942 or 143Z1 or 1158Z1 or 2017Z1 or 22317) and request and (documents or information or records))

OR

((oklahoma or ok) and transfer and component)

OR

("oklahoma public domain mmis system transfer" or "oklahoma interchange mmis" or okmmis or "oklahoma & electronic data systems corporation" or "oklahoma healthcare authority" or "oklahoma medicaid")

)

**EXHIBIT C**

**ACS' Legal Staff Keyword(s)**

ACS In-house Legal:

•Abbott (Robin)Bang (Debra)Brino (Amanda)Coggin (Maggie)Davis (Maureen)Good (Tracy)Hilbun (Tom)Kinnan (Kevin)Lorton (Tres) Mackay (Liz)Olvera (Mike) Panos (Tas)Peterson (Frank)Russin (Richard)Scheitzach (Clay) Splitt (David) Tamez (Raquel) Wade (Christina)Webber (Paul)Willett (John)

ACS Outside Legal:

•Barnard (Brenda)Damico (Catherine)Furbee (Amber)Fuller (Joseph "Joey")Gould (Bryan)Gwilt (Paul)Jaffe (Rob)Kenny (Tom)Ludwig (Lisa)Mathews (Sara)McLeay (Bart)Reiners (Marianne)Shehan (Suzanne) VanderVeen (Joel)Kutak"Cline Williams"@kutakrock.com@clinewilliams.com



**EXHIBIT D**

**FourThought's Legal Staff Keyword(s)**

FourThought In-house Legal:

- Barber (Jacques)

FourThought's Outside Legal:

- Grasz (Steve)Daub (Hal)Dahlk (Tom)Koller (Theresa "Teri")Wiedrich (Henry)BlackwellBlackwell  
SandersHuschHusch Blackwell Sanders@blackwellsanders.com@huschblackwell.com

**EXHIBIT E**

**Legal Term Keyword(s)**

**Terms:**

•LegalLawyerCounselPrivilegeConfidential“Attorney-Client Communication”“Work Product”ProprietaryLitigationSuitLawsuitComplaintCaseProtestInjunctionTROAffidavitAppealStandingClaimCourtJudgeConflict of InterestOCI